

AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 823

Introduced by Senator Block

January 6, 2016

An act to amend Section 1203.49 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Block. Criminal procedure: human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, and would authorize a court to issue an order that (1) sets forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Existing law authorizes a person who was adjudicated a ward of the juvenile court for solicitation or prostitution to, upon reaching 18 years of age, petition the court to have his or her record sealed, as specified.

This bill would instead create a presumption that if a defendant or person who has been arrested, convicted, or adjudicated a ward of the juvenile court for committing any *nonviolent* offense while he or she was a victim of human trafficking shows evidence that the arrest,

conviction, or adjudication was the *direct* result of ~~his or her status as a victim of human trafficking, or in clear connection with a human trafficking scheme of which he or she was a victim,~~ the defendant or person has met the requirements for relief under these provisions. *The bill would require that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later.* The bill would additionally require the order of relief to include sealing related arrest and court records. The bill would provide that official ~~documentation~~ *documentation, as defined,* of a petitioner's status as a victim of human trafficking, ~~as defined, shall establish~~ *trafficking establishes* a presumption that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking. The bill would provide that a petitioner or his or her attorney is not required to appear in person at a hearing for the relief described above, and may appear via alternate specified methods. The bill would prohibit the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public. The bill would authorize a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1203.49 of the Penal Code is amended
- 2 to read:
- 3 1203.49. (a) If a defendant has been arrested for or convicted
- 4 of any *nonviolent* offense committed while he or she was a victim
- 5 of human trafficking, including, but not limited to, solicitation or
- 6 prostitution, as described in subdivision (b) of Section 647, the
- 7 defendant may petition the court for relief under this section. If

the petitioner can establish that the arrest or conviction was the *direct* result of ~~his or her status as a victim of human trafficking,~~ *or in clear connection with a human trafficking scheme of which he or she was a victim*, the petitioner shall be entitled to a presumption that the requirements for relief have been met, and the court may issue an order that does all of the following:

(1) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.

(2) Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.

(3) Seals the arrest and court records relating to the arrest and conviction.

(4) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

(b) A person who was arrested or found to be a person described in Section 602 of the Welfare and Institutions Code because he or she committed ~~an~~ *a nonviolent* offense while he or she was a victim of human trafficking, including, but not limited to, solicitation or prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner can establish that the arrest or adjudication was the *direct* result of ~~his or her status as a victim of human trafficking,~~ *or in clear connection with a human trafficking scheme of which he or she was a victim*, the petitioner shall be entitled to a presumption that the requirements for relief have been met, and the court may issue an order that does all of the following:

(1) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.

(2) Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.

(3) Seals the arrest and court records relating to the arrest and adjudication.

(4) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

(c) *An application pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human*

1 *trafficking, whichever occurs later, subject to reasonable concerns*
2 *for the safety of the person, family members of the person, or other*
3 *victims of human trafficking that may be jeopardized by the*
4 *bringing of the application, or for other reasons consistent with*
5 *the purpose of this section.*

6 ~~(e)~~

7 (d) For the purposes of this section, official documentation of
8 a petitioner's status as a victim of human trafficking shall establish
9 a presumption that his or her participation in the offense was the
10 result of his or her status as a victim of human trafficking. For the
11 purposes of this subdivision, "official documentation" means any
12 documentation issued by a federal, state, or local agency that tends
13 to show the petitioner's status as a victim of human trafficking.
14 Official documentation shall not be required for the issuance of
15 an order described in subdivision (a).

16 ~~(d)~~

17 (e) A petitioner, or his or her attorney, is not required to appear
18 in person at a hearing for relief pursuant to this section, and may
19 appear telephonically, via videoconference, or by other electronic
20 means established by the court.

21 ~~(e)~~

22 (f) Notwithstanding any other law, a petitioner who has obtained
23 an order pursuant to this section may lawfully deny or refuse to
24 acknowledge an arrest, conviction, or adjudication that is set aside
25 pursuant to the order.

26 ~~(f)~~

27 (g) Notwithstanding any other law, the records of the arrest,
28 conviction, or adjudication shall not be distributed to any state
29 licensing board.

30 ~~(g)~~

31 (h) The record of a proceeding related to a petition pursuant to
32 this section that is accessible by the public shall not disclose the
33 petitioner's full name.

34 ~~(h)~~

35 (i) A court that grants relief pursuant to this section may take
36 additional action as appropriate under the circumstances to carry
37 out the purposes of this section.

38 ~~(i)~~

39 (j) If the court denies the petition for relief because the evidence
40 is insufficient to establish that the arrest, conviction, or adjudication

1 was the result of the petitioner’s status as a victim of human
2 trafficking, the denial shall be without prejudice. The court shall
3 state the reasons for its denial in writing and, if those reasons are
4 based on curable deficiencies in the petition, allow the petitioner
5 a reasonable time period to cure the deficiencies upon which the
6 court has based the denial.

7 *(k) For the purposes of this section, “nonviolent offense” means*
8 *any offense except those listed in subdivision (c) of Section 667.5*
9 *of the Penal Code.*

10 SEC. 2. The Legislature finds and declares that Section 1 of
11 this act, which amends Section 1203.49 of the Penal Code, imposes
12 a limitation on the public’s right of access to the meetings of public
13 bodies or the writings of public officials and agencies within the
14 meaning of Section 3 of Article I of the California Constitution.
15 Pursuant to that constitutional provision, the Legislature makes
16 the following findings to demonstrate the interest protected by this
17 limitation and the need for protecting that interest:

18 In order to protect the privacy of victims of human trafficking
19 and to improve their opportunities for recovery, it is necessary that
20 this act limit the public’s right of access to the full name of a
21 petitioner who seeks relief from an arrest or conviction for an
22 offense in which the petitioner participated as a result of his or her
23 status as a victim of human trafficking.